IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2826 OF 1997

Sagarkumar Bhagwan Devre Petitioner

versus

State of Maharashtra & others Respondents

Mr.R.K.Mendadkar, adv. for petitioner.

C.R.Sonawane, adv. for respondents.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 26th October 2004

PC :

1. Petitioner challenges an order passed by the Scrutiny Committee dated 21st June 1997 invalidating claim of petitioner to "Tokre Koli" Scheduled Tribe.

2. On 19th March 1996, petitioner made an application for verification of his Tribe claim as he intended to prosecute further studies in Medicine, after passing H.S.C.. On 21st May 1997 petitioner was called for an interview which he attended with his father.

3. It is his case that production of validity certificate is necessary to seek admission in reserved category. Petitioner contends that in olden days there were Census instructions not to record sub divisions of Koli. Therefore, in olden days only entry Koli is made. He submits hat Koli is a broad nomenclature which includes it’s all sub tribes. Petitioner relies upon studies of experts in this field in support of this submission. He submits that the entry "Koli" in the record of grand-father of petitioner is not fatal to his claim as belonging to "Tokre Koli". He submits that this aspect has been clarified by the State of Maharashtra vide Circular dated 25th September 1987. All Scheduled Tribe certificates issued after 29th October 1980 are treated as valid by the State even if the school record shows entry "Koli" only.

4. In support of petitioner’s claim, reliance was placed on the service book extract of his father where he has been shown as belonging to "Tokre Koli Scheduled Tribe". He submits that discarding this extract, the scrutiny committee has proceeded to invalidate the caste claim just because the old record of petitioner’s

grand-father shows "Koli".

5. Apart from the above, reliance was placed on a judgement delivered by this Court in respect of Mr.Prakash Saidhane holding that he belongs to "Tokre-Koli Scheduled Tribe". According to petitioner Prakash Saidhane is his near relative. An affidavit has been filed explaining relationship. Petitioner submits that this vital piece of evidence has been brushed aside by the scrutiny committee only on the ground that Prakash Saidhane has not filed any affidavit. Petitioner contends that there cannot be inconsistency in case of blood/near relatives. He submits that if near relatives of petitioner are held to be Koli, then petitioner cannot be an exception.

6. In assailing the impugned order, Mr.Mendadkar invited our attention to the aforesaid aspect and also contended that the order of scrutiny committee is in breach of principles of natural justice inasmuch as the scrutiny committee has invalidated the tribe claim relying upon enquiry report of the Vigilance Cell. Mr.Mendadkar submits that though the said report is used against the petitioner, a copy thereof was never furnished to him. He, therefore, submits that

the order of scrutiny committee is bad in law on this ground also.

7. On the other hand, Mr.Sonawane, learned AGP supported the order of scrutiny committee. However, no affidavit-in-reply has been filed dealing with the contentions raised in this petition.

8. With the assistance of learned counsel we have perused the impugned order and the annexures to the writ petition. The scrutiny committee has observed that the candidate in the present case has furnished as many as ten documents. Out of these, two documents are school record of the candidate and his grand-father i.e. Bhila Tumudu Koli. Apart from that, there are other documents and orders passed by this Court at Aurangabad in Writ Petition No.2447 of 1991 and an order of Additional Commissioner, Nashik in Appeal No.7 of 1994. The scrutiny committee has observed that caste of candidate is recorded as Koli (Tokre) in his high school leaving certificate, whereas, his grand-father’s caste is recorded as Koli in his primary school leaving certificate. Therefore, the scrutiny committee thought it fit to conduct a school and home inquiry through Police Inspector of Vigilance Cell. Police Inspector

has furnished his report to the scrutiny committee on 29th April 1997. Thereafter, the scrutiny committee has issued notice to the petitioner to appear before it. It further appears that the scrutiny committee proceeds on the basis that petitioner has noticed contents of this report.

9. A perusal of order of scrutiny committee leaves us in no manner of doubt that the scrutiny committee has relied upon vigilance cell's report as also proceeded on the basis that the primary school leaving certificate of petitioners grand-father cannot be discarded. Other documents also have been disbelieved in the light of contents of report.

10. In our view, in the light of the clear assertion of petitioner in para no.6 of the petition that copy of vigilance cell report has not been furnished to him, the impugned order of the scrutiny committee cannot be sustained. We do not wish to go into the contentions on merits of the claim in the light of directions that we propose to pass in the following paragraphs.

11. As a result, order passed by the Committee for Scrutiny and Verification of Tribe Claims

dated 21st June 1997 is quashed and set aside.

12. The matter is remitted back to the scrutiny committee set up under Act No.XXIII/2001 for scrutiny and verification of the caste claim of petitioner to "Tokre Koli Scheduled Tribe". The scrutiny committee is directed to scrutinise and verify caste claim of petitioner within a period of six months from today. Petitioner is directed to appear before the scrutiny committee on 23rd November 2004. All contentions on merits of the claim are expressly kept open. Petition disposed of accordingly.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)